STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY Edmund G. Brown, Jr., Governor

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814
Telephone: (916) 445-0633

ALL-COUNTY INFORMATION NOTICE I-146-81

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: LOWRY v. OBLEDO

REFERENCE:

The purpose of this letter is to inform you of recent developments in the case of Lowry v. Obledo.

As you are aware, plaintiffs in this case challenged MPP Section 44-113.241(b) contending it was invalid insofar as it fails to provide for individualized determinations of whether an incurred cost of child care is reasonable and necessary where such child care is provided by a nonworking member of the AFDC recipient's household.

On June 3, 1980, the Court of Appeal ruled in favor of plaintiffs. The Supreme Court denied the Department's request for a hearing.

On October 28, 1981, the Sacramento County Superior Court issued the final judgment in the case. A copy of the judgment and of the pertinent portion of the opinion of the Court of Appeal are attached.

The class of people entitled to benefits under the judgment is defined as follows:

> "All persons who during any month or months subsequent to February 1, 1977, came within each of the following criteria:
>
> "a. Who were recipients of AFDC;
>
> "b. Who were concurrently employed;

"c. Who were not allowed as a deduction from earnings countable in computation of their AFDC benefits, costs which they actually incurred by paying non-working members of their respective households for child care during working hours; and

"d. For whom such disallowance was based solely upon the provisions of MPP Section 44-113.241(b)."

The Department is in the process of developing regulations to implement the order of the court. Public hearing on proposed regulations were held on October 23, 1981. Final regulations are subject to approval of the court before implementation.

In order to inform class members of their right to retroactive relief and of their prospective rights under this decision, the Department and the county welfare departments will be required to do the following:

(1) Mailing of notice to all current AFDC recipients advising them of their right to a retroactive redetermination of benefits if they are class members, and of their prospective rights under this decision;

(2) Review of current recipients' records during the next annual redetermination of eligibility to identify and contact possible retroactive class members; and

(3) Posting of notices in County Welfare Department and State Department of Social Services offices, and mailing of notice posters to county hospitals, Employment Development Department offices and junior colleges with the request they be posted.

We will keep you informed of the actions required on your part to implement the judgment. In the meantime, it is suggested that to the extent possible you begin to identify those cases which may be eligible for benefits under the judgment upon implementation of the regulations and the process for determining retroactive benefits.

Sincerely,

Kyle S. McKinsey

KYLE S. McKINSEY
Deputy Director

cc: CWDA

Attachments

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

STEPHANIE LOWRY, MARILYN HOOVER, RITA TREJO, on behalf of themselves; and all others similarly situated,	NO. 270747
Plaintiffs/Petitioners,	JUDGMENT AFTER REMITTITUR
vs.	
MARIO OBLEDO, Secretary, Health and Welfare Agency, State of California; MARION WOODS, Director, Department of Benefit Payments, State of California,	
Defendants/Respondents.	

I. It is hereby declared that Manual of Policies and Procedures (MPP) section 44-113.241(b) is invalid insofar as it fails to provide for individualized determinations of whether an incurred cost of child care is reasonable and necessary where such child care is provided by a non-working member of the AFDC recipient's household. Repsondent is hereby ordered to cease enforcement of MPP section 44-113.241(b) insofar as it has been declared invalid, and to develop and promulgate a new regulation to replace that subsection which implements the Court's decision concerning work-related expenses for child care provided by non-working

members of the household. This regulation shall be subject to approval of the Court before promulgation.

II. Within five days of receiving notice of entry of this judgment, respondents shall provide all county welfare directors by way of an All County Letter or similar formal communication;

a. An abridged copy of the actual decision of the Court of Appeal in this case, and this Court's final Judgment after Remittitur;

b. The definition of the class of people entitled to a new determination of benefits; and

c. The notice requirements in the Judgment to be given to both retroactive and prospective class members.

The notice to be given pursuant to paragraph II(c) shall include, at a minimum, the following:

1. Mailing of notice to all current AFDC recipients advising them of their right to a retroactive redetermination of benefits if they are class members, and of their prospective rights under this decision;

2. Review of current recipients' records during the next annual recertification of eligibility to identify and contact possible retroactive class members; and

3. Posting of notices in County Welfare Department and State Department of Social Services offices, and mailing of notice posters to county hospitals, Employment Development Department offices and junior colleges with the request they be posted.

III. Plaintiffs and respondents will issue a

simultaneous press release immediately on entry of judgment or as soon therafter as possible in order to inform the public and particularly eligible class members of the benefits available to the class, and especially of their right to a retroactive redetermination of any benefits which may have been affected by their inability to deduct payments to non-working household members for child care as reasonable work-related expenses. Respondents shall provide petitioners in their advance copy and opportunity to submit comments on the press release.

IV. The class of people entitled to benefit from this judgment is defined as follows: All persons who, during any month or months subsequent to February 1, 1977, came within each of the following criteria:

a. Who were recipients of Aid to Families with Dependent Children (AFDC);

b. Who were concurrently employed:

c. Who were not allowed, as a deduction from earnings countable in computation of their AFDC benefits, costs which they acutally incurred by paying non-working members of their respective households for child care during working hours; and

d. For whom such disallowance was based solely upon the provisions of MPP section 44-113.241(b).

Class members are entitled to request that the State Department of Social Services, with respect to each month for which the individuals come within the class, make an individualized determination of whether the incurred cost of

child care is allowable as a work related expense deduction from income under the standards enunciated in the decisions of this Court and of the Court of Appeal. If the individualized determination results in a finding that the claimant meets the above criteria, and was therefore entitled to more aid than was recieved, the Defendant Department shall promptly pay the claimant the full amount by which she or he was underpaid for each month affected and, for purposes of determining continued eligibility and amount of assistance, retroactive payments shall not be considered as income or as a resource in the month paid or in the following six months.

V. No prejudgment interest will be provided.

VI. Plaintiffs are awarded attorneys' fees in the amount of $5,850, payable to their attorneys, Legal Services of Northern California, Inc., within 60 days of entry of judgment unless there are complications outside the control of the Department.

Dated: _____

_____
WILLIAM K. MORGAN
Judge of the Superior Court

care during working hours, where such disallowance is based solely upon the provisions of MPP section 44-113.241(b)." MPP section 44-113.241(b) was declared invalid insofar as it failed to provide for individualized determinations of whether the incurred cost of child care was reasonable. The court granted peremptory writs of mandate ordering defendant to set aside the fair hearing determinations of plaintiffs Lowry and Hoover. The court did not certify the class for purposes of the cause of action seeking a peremptory writ of mandate for the class members and no such writ was ordered.

I

Defendants contend that the trial court erred in holding that MPP section 44-113.241(b) is violative of Welfare and Institutions Code section 11451.6 and 42 U.S.C. 602(a)(7). We do not agree.

The effect of MPP section 44-113.241(b) is to place an absolute bar against allowing as work-related expenditures deductible from an applicant's income those child care expenses paid to a member of the applicant's household. However, the United States Supreme Court has interpreted 42 U.S.C. 602(a)(7) as "a congressional directive that no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income." (Shea v. Vialpando (1974) 416 U.S. 251, 260 [40 L.Ed.2d 120, 129]. Emphasis added.) The court concluded that the requirement of

recognizing all reasonable expenditures was based upon congressional concern that a contrary policy would discourage applicants from seeking and retaining employment. Defendants' refusal to allow as work-related expenditures those child-care expenses reasonably paid to members of a recipient's household can only serve to discourage some parents from seeking or retaining employment because alternative child care arrangements are unavailable to them or inadequate to their child's needs.

In Shea the court struck down a state regulation providing an absolute uniform allowance for certain employment expenses. Defendants attempt to distinguish Shea by arguing that the regulation in question does not bar reasonable child care expenses so long as the care is provided by someone other than a member of the recipient's household. Shea cannot be so easily distinguished; "as to reasonable expenses attributable to the earning of income, Congress has spoken with firmness and clarity.", (Shea v. Vialpando, supra, 416 U.S. at p. 266 [40 L.Ed.2d at p. 133].)

Defendants assert that to strike the regulation at issue will leave the state defenseless against fraud and collusion between the applicant and members of the applicant's household. This argument is overstated. The record reflects that the county visits each child care provider to certify the services as adequate. Such procedures do not leave the state

defenseless against fraud and collusion; to the contrary, they are some protection against this ever-present possibility. Moreover, there is nothing in Shea to prohibit defendant from establishing a presumption of unreasonableness where a child care provider is a member of the applicant's household. Instead, Shea prohibits only an absolute limitation upon the recognition of work-related expenditures. (Shea v. Vialpando, supra, 416 U.S. at p. 265 [40 L.Ed.2d at p. 132.)

II

Second, defendants contend that its due process rights were infringed upon by the trial court's failure to certify the class and require notice to its members prior to reaching the merits of the case. Defendants have failed to show prejudice resulting from this procedure.

Defendants principally rely on Home Savings and Loan Association v. Superior Court (1974) 42 Cal.App.3d 1006, and Home Savings and Loan Association v. Superior Court (1976) 54 Cal.App.3d 208. These cases hold that a defendant against whom a class action is brought has a due process right to obtain class certification and notice to class members before determination of the merits of the action. This rule attempts to prevent "one-way intervention" by which members of the class may join in the action if the outcome is favorable to their interests but avoid the binding effect of an unfavorable judgment because of their lack of notice.